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Supreme Court, U.S.
FILED
JUL 31 2007
OFFICE OF THE CLERK

No. 06-9130

In the Supreme Court of the United States

ABDUS-SHAHID M.S. ALI, PETITIONER,

v.

FEDERAL BUREAU OF PRISONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: JANUARY [illegible]
CERTIORARI GRANTED: MAY 29, 2007

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SUPREME COURT, U.S.

TABLE OF CONTENTS*

Docket entries, United States District Court for the Northern District of Georgia (Atlanta) 1

Docket entries, United States Court of Appeals for the Eleventh Circuit 4

First amended complaint, United States District Court for the Northern District of Georgia, Atlanta Division (filed Aug. 10, 2005) 6

Plaintiff's affidavit in support of complaint (dated Oct. 4, 2004) [Exh. 1 to First Am. Compl.] 24

Standard Form 95: Claim for damage, injury, or death (dated Dec. 30, 2002) [Pgs. 1-3 of Exh. 2 to First Am. Compl.] 30

Plaintiff's affidavit "on lost property left in the care of USP-Atlanta, Ga. OIC, Qun'anis" (dated Feb. 19, 2004) [Pgs. 4-5 of Exh. 2 to First Am. Compl.] 32

Inmate personal property record (dated Aug. 14, 2001) [Pg. 6 of Exh. 2 to First Am. Compl.] 34

USP-Atlanta sales receipts [Pgs. 7-9 of Exh. 2 to First Am. Compl.] 35

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* Any spelling, punctuation, or grammatical errors found in the following Joint Appendix pages were intentionally left to show accurately how the original documents appeared.

Letter from Lisa M. Sunderman, Federal Bureau of Prisons Southeast Regional Counsel, to Abdus-Shahid Ali (dated Mar. 2, 2004) [Exh. 3 to First Am. Compl.] 36

Letter from Lisa M. Sunderman, Federal Bureau of Prisons Southeast Regional Counsel, to Abdus-Shahid Ali (dated Aug. 11, 2004) [Exh. 4 to First Am. Compl.] 38

Order of the United States District Court for the Northern District of Georgia granting defendants' motion to dismiss (filed Jan. 27, 2006) 41

Unpublished opinion of the United States Court of Appeals for the Eleventh Circuit (filed Oct. 19, 2006) 57

RELEVANT DOCKET ENTRIES

United States District Court
Northern District of Georgia (Atlanta)
1:04-cv-02986-JFK

Abdus-Shahid M.S. Ali v.
Federal Bureau of Prisons, et al.

10/12/04	1	COMPLAINT filed , filed by Abdus-Shahid M.S. Ali.(ldp) (Entered: 10/15/2004)

* * *

07/05/05	19	MOTION to Dismiss with Brief In Support by Federal Bureau of Prisons, Lippin, R. Wiely, Qun'anis, Southeast Regional Director. (Attachments: # 1 Exhibit 1 pages 1-3# 2 Exhibit 2 pages 1-6# 3 Exhibit 3 pages 1-6)(McClain, Stephen) (Entered: 07/05/2005)
07/11/05	20	MOTION for leave to Amend 1 Complaint by Abdus-Shahid M.S. Ali. (Attachments: # 1 Proposed Amended Complaint)(fmm) (Entered: 07/12/2005)
07/14/05	21	MOTION to Dismiss *Renewed by Defendants'* with Brief In Support by Federal Bureau of Prisons, Lippin, R. Wiely, Qun'anis, Southeast Regional Director. (McClain, Stephen) (Entered: 07/14/2005)
07/25/05	22	RESPONSE in Opposition re 19 MOTION to Dismiss filed by Abdus-Shahid M.S. Ali. (fmm) (Entered: 07/27/2005)

* * *

07/27/05		Submission of 19 MOTION to Dismiss, 20 MOTION to Amend 1 Complaint, 21 MOTION to Dismiss *Renewed by Defendants'*, submitted to District Judge Orinda D. Evans. (fmm) (Entered: 07/27/2005)

* * *

08/10/05	25	ORDER granting 24 Motion for Relief from Local Rules 16.1 and 26.1 until 14 days from the date of the ruling on the pending motion to dismiss, granting 20 Motion to Amend and clerk is directed to file the proposed amended complaint as of the date of this order, denying 23 Motion to Appoint Counsel. Signed by Judge Orinda D. Evans on 8/9/05. (fmm) (Entered: 08/10/2005)
08/10/05	26	AMENDED COMPLAINT against all defendants and adding defendant United States filed by Abdus-Shahid M.S. Ali.(fmm) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 08/10/2005)

* * *

01/27/06	28	ORDER granting 21 Renewed Motion to Dismiss and dismissing with prejudice plaintiff's claim under the FTCA and dismissing without prejudice plaintiff's other

claims under the Religious Freedom Act, Institutionalized Persons Act and Bivens. Signed by Judge Orinda D. Evans on 1/26/06. (fmm) (Entered: 01/27/2006)

01/27/06 29 CLERK'S JUDGMENT entered dismissing with prejudice plaintiff's claim under the FTCA and dismissing without prejudice plaintiff's other claims under the Religious Freedom Act, Institutionalized Persons Act and Bivens. (fmm) --Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist-- (Entered: 01/27/2006)

02/01/06 Civil Case Terminated. (fmm) (Entered: 02/03/2006)

02/27/06 31 NOTICE OF APPEAL as to 28 Order on Motion to Dismiss,, 29 Clerk's Judgment, by Abdus-Shahid M.S. Ali. Transcript Order Form due on 3/13/2006.Appeal fee letter and IFP forms mailed to plaintiff. (fem) (Entered: 03/01/2006)

* * *

03/09/06 33 USCA Acknowledgment of 31 Notice of Appeal filed by Abdus-Shahid M.S. Ali,. Case Appealed to USCA Case Number 06-11468-A (fem) (Entered: 03/13/2006)

United States Court of Appeals
for the Eleventh Circuit
06-11468-AA

Abdus-Shahid M.S. Ali v.
Federal Bureau of Prisons, et al.

* * *

03/07/06	DKT2 (Docketing Notice) issued. To:Ali, Abdus-shahid; c:Luther D. Thomas; c:Stephen H. McClain; c:Thurbert Baker

* * *

05/08/06	Appellant Brief Filed: (ProSe)

* * *

06/13/06	Appellee Brief Filed: (Atty: Stephen H. McClain)

* * *

10/19/06	Judgment Entered
10/19/06	OPIN1 (Notice of issuance of opinion) issued. c:Ali, Abdus-Shahid M.S.; c:Orinda D. Evans; c:Stephen H. McClain
10/19/06	Opinion Issued AFFIRMED in pt/VACATED in pt/REMANDED.

* * *

12/14/06	CASE CLOSED-Mandate Issued
12/14/06	Mandate Issued

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 1:04-CV-02986-ODE

[Filed August 10, 2005]

ABDUS-SHAHID M.S. ALI, Pro Se.	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES	)
FEDERAL BUREAU OF PRISONS,	)
HARLEY LAPPIN, Director F.B.O.P.	)
R. WILEY, FOEMER-WARDEN-USP-ATLATA	)
DANIEL QUINONES, R & D-OIC-Atlanta	)
Defendants,	)
	)

JUDGE: ORINDA D. EVANS,
UNITED STATES DISTRICT JUDGE
FIRST: AMENDED COMPLAINT:
JURY TRIAL DEMAND: GENERAL–DEFENDANTS
JUDGE TRIAL DEMAND AGAINST U.S.

CIVIL RIGHTS COMPLAINT FOR VIOLATIONS
OF CONSTITUTIONAL AND STATUTORY
RIGHTS UNDER THE PROVISIONS OF
Title 28 U.S.C. § 1331, §1343, §1346, §1367
& Title 42 U.S.C. § 2000bb-1, & 2000cc-1

Comes now the above cited Plaintiff, being deposed according to law and address this Court under the penalty of perjury as follows:

PRELIMINARY STATEMENT

[1] That this cause of action and redress is brought by the Plaintiff for damages and injunctional relief and what other actions that the Court deems necessary and proper...for the Defendants' callous and the negligent-indifference to the lost, thief, looted, confiscated or destoried/destruction of the Plaintiff's personal and religious property while it was in their care and trust, during the period it was left in the R & D, and while the Plaintiff had been transfered from the USP-Atlanta, Ga. to the USP-Big Sandy, at Inez, Kentucky.

[2] That Plaintiff is a former-inmate of the DCDC(hereinafter for District of Columbia Department of Corrections), having been transfered into the FBOP(hereinafter-for Federal Bureau Of Prisons), at USP-Atlana, Ga. pursuant to an act of Congress that closed the Lorton,Va.-DCDC-Central Facilities about October 1st,2001. Plaintiff arrived at USP-Atlanta, Ga. on Gugust 1st,2001.

[3] That Plaintiff having filed and exhausted his administrative remedies, for the return or restitution of his missing property, pursuant to the FTCA(hereihafter for Federal Tort Claims Act), (28U.S.C. §1346, §2671), to no avail! Therefore having been given leave to proceed wtih legal action in the Courts as of August 11th, 2004 Plaintiff filed the instant suit seeking fust redress for the lost property.

[4] Plaintiff now sues the United States /FBOP and said other Defendants in both their Official and individual capacities under supplimental jurisdictionas. The complaint is against the United States, the Federal Bureau of Prisons and current and and former federal officials employeed by the FBOP at USP-Atlanta, Ga. for the violation of the Plaintiff's property rights under the First, Fourth and Fifth Amendments to the Constitution, and Statutory violations also. The Defendants clandestinedly looted and/or confiscated unjustifiablly said personal, legal and religious property. It was done in a discriminational, and deliberate malice, negligence and indifference. The Plaintiff thus, seeks damages from the United States and /or Damages and punitive damagesand injunctive relief from the FBOP and the Defendants cited herein under 28 U.S.C. §1331, §1343, §1346(b) and §1367; ALSO 42 U.S.C. §2000bb-1 ("RFRA").(hereinafter-for-Religious Freedom Restoration Act); ans §2000cc1 ("RLUIFA"), (for the Religious Land use and Istitutionalized Persons Act), for rights to free exercise of religion, due process, and for protection from the said Establishment of a religion.

JURISDICTION STATEMENT

[5] That the Court has juridiction over the Plaintiff's Claims of the violations of his Federal Constitutional Rights under 28 U.S.C. § 1331, §1343, §1346(b) and 42 U.S.C. §2000bb-1 and §2000cc-1.

[6] That the Court have Supplimental Jurisdiction over the Plaintiff's Tort and Civil Rights Federal Claims under Title 28 U.S.C. §1367(a), Title 42U.S.C. §2000bb-1 and §2000cc-1.

[6] That Venue is proper under Title 28 U.S.C. § 1391(e).

PARTIES

[7] That Plaintiff, Abdus-Shahid M.S. Ali,Reg.#03201-000, and is housed at this time in the USP-Big Sandy, at Inez, Kentucky. He was returned back to USP-Big Sandy from the Federal Medical Center For Prisoners on April 27th, 2005. At all times relevant to this suit Plaintiff was domiciled in USP-Atlanta, Georgia from August 1st, 2001 until December 3rd, 2003.

[8] That Defendants United States, is the governing power of the United States of America. and acts under the color of Federal Law, rules, regulations, customs and Policy . . . Its is sued in its Official and Individual Capacity. Its' Chief Counsel is the U.S. Attorney General and its address location is Office of the Attorney General. of the U,S, at the U.S. Department Of Justice..10th and Constitution Avenue, N.W.in Washington, D.C. 20001

[9] That Defendant Federal Bureau of Prisons, is an official Agent/agency of the United and operate under the color of federal law,regulations, customs and policy. It operate over 105 federal facilities. Its' chief representative is the Director, Harley Lappin. Its is sued in both its Official and Individual Capacity. Its official address is 320 First Street, N.W. at Washington , D.C. 20534.

[10] Defendant Harley Lappin, is the Director of FBOP ans is employeed as such by the Federal Government. He is the Chilf Officer and policy maker of the FBOP. He was so employeed at all times relevant to this suit. His official address is at 320 First Street, N.W. Office

of the Director, at Washington, D.C. 20534 He is sued in both his Official

[11] That Defendant, R. Wiely, upon information and belief is the former-warden of USP-Atlanta, Ga. He is / was so employeed by the FBOP at all times relevant to this suit. He was the chilef policy officer in the USP-Atlanta. His was known official address was USP-Atlanta, Ga. 601 McDonough, Blvd., S.E. Atlanta, Ga. 30315. He is sued in both his said official and Individual Capacity.

[12] Daniel Quinones, R and D-OIC-USP-Atlanta, was the said "office In Charge"(hereinafter-OIC), of the receiving and Discharge (hereinafter-R & D), Unit for USP-Atlanta, Ga. He was employeed by the FBOP- at the USP-Atlanta, Ga. Facility. As such an employee he was present at all time relevant to this complaint, as the OIC of R & D. He was the direct person that accepted responsibility for the inventory and packaging of all Plaintiff's property and he labled the boxes and handled the shipping.He is sued in both his official and individual capacity. His official mailing address is USP-Atlanta, Ga...601 McDonough Blvd., S.E. Atlanta, Ga., z.c.-30315.

FaCTURAL-ALLEGATIONS STATEMENT

[13] That it is a fact that the Plaintifleft his property (personal, legal and religious),on December 2nd,2003. in the personal care of USP-Atlanta, in the hands of R & D Staff-OIC, D.Quinones.The Plaintiff had been callled to the R & D Unit at about 8:00 AM on December 2, 2003 to have his property inventoried and packaged up for transfer to the USP-Big Sandy, at Inez, Ky. The Plaintiff was to be transfered on 12/3/03.

[14] That the Plaintiff waited all morning to have his property inventoried and boxed-up for shipping...(this was the second time that the plaintiff had tried to get his property inventoried and packaged up for shipping to the new facility-USP-Big Sandy; On 11/28/03 the said Plaintiff had taken all his property to the R & D for inventory and packaging, but was told by officer D. QUINONES that I would have to take my property back to the cellhouse because he was working by his self and he only caaled us over to let us know the rules for property that could be transfered to the new facility, Thus he informed us to bring the property back to R & D on Monday or Tuesday then he sent for us.) Thus, the said Plaintiff was sent for on Tuesday, December 2, 2003 at about *:00AM.

[15] That Plaintiff waited half a day and was informed by Officer, D. Quinones, R & D-OIC, that he was working alone and that the way it was going he was not going to be able to get to inventory my property before it was time for him to go home. He said if you leave your property right there in the doorway of one of the R & D Unit property rooms he woul get to it in a day or so and that he would ship every thing in the two bags (green-army-duffal bags),in boxes and ship it all off to USP-Big Sandy because I was not there to mail anything home that couldn't go or be shipped. Thus the Plaintiff complied with the officers request. He closed up his duffal bads and put his combination locks on the bags andleft them in the property room. All the misted missing property was in the two bags

[16] That when the Plaintiff's property was given to him in USP-Big Sandy the misted missing property was not accounted for in the USP-Atlanta, Ga. inventory slip not

was it acknowledged as having been received by thr USP-Big Sandy R & D inventory slips.

[17] That Plaintiff's said missing property items can be provened as having been a part of his property and dated via., the USP-Atlanta canteen slips or the USP-Atlanta inventory slips from 8/20/01 (the date plaintiff's property from DCDC-Lorton, Va. was inventoried and givento the plaintiff in USP- Atlanta, Ga. Also the Plaintiff's DCDC-Lorton, Va. inventory slip for 8/1/01, the day he was transfered from the DCDC-Lorton, Va. Central Facility to the USP Attlanta, Ga.). All those slips will show owership of the missing property listed in this suit as Plaintiff's Exhibit No. two.

[18] Plaintiff is a Muslim and his religious faith is Al-Islam and his religious Holy Book is the Holy Qur'an. Thus his religious Book is sacred to him, and so is his prayer-rugs, and other religious lierature.

[20] That upon information and belief, adherents of the Islamic faith constitute a large minoroty of the total population in the FBOP and the State facilities.

[21] That the FBOP have rules and regulations thats been so developed for both religious and personal property that is allowed in the FBOP. Plaintiff affirms that his two Holy Qur'ans are missing from his property left in the care of officer Daniel Quinones in the R & D property Room-Unit.; and that he had owned them for 15 to, 20 years...they both were very dear to him. He brought them from DCDC-Lorton Va. on 8/1/01..when he transfered to the FBOP at USP-Atlanta, Ga. They were very dear to him...They were on his DCDC-Lorton, Va, inventory listing.

[22] That Muslims practicing traditional Al-Islam are required by the Islamic laws to adhere to certain religious-ritual. One such ritual of central importance is prayer five times a day, at appointed times. Thus, we are permitted to own prayer caps (kuffies), prayer rugs, and prayer oils, etc., which are very dear to the hearts of all traditional Muslims. One of the Plaintiff's prayer rugs was on the missing property list...the Plaintiff had serveral bottles of oils were missing (4 ounce bottles purchased in DCDC-Lorton.

[23] That upon information and belief Muslim inmates especially since September 11, 2001 have been subjected to very hard times and bad treatment at the hands of both FBOP, State and Local prison employees. Reports from all over the Country have come in on their(Muslims)'s) property, especially religious property has been destoyed, confiscated, looted,lost, stolen or taken without cause or justifications. These conditions takes on an Islamiaphobia(harassment) attitude.

[24] That Plaintiff's religious magazines(about five in nunber) "Al-Jumu'ah were also removed from the property of the Plaintiff left in the USP-Atlanta R & D Unit. The FBOP do have policy on "not transfering magazines and newspapers, however, if the Plaintiff is not their to sent those items home, theyshould be mailed on the the receiving institution, and allow them to deal with the issues. After all they have the same Rules and regulations in all FBOP facilities. They should never just confiscate a persons property and do as they please with it.

[25] That in the Plaintiff's Exhibit No. (2),(attached hereto is a listing of all property items missing from Plaintiff's left in the care of Officer, D. Quinones, OIC of

the R & D USP-Atlanta, Ga.property room...The list also tells where the missing items were purchased or bought in the FBOP and/or USP-Canteens, in the DCDC-Lorton, Va. Facilities.

Heighten standards Of Review and Factural Details:

[26] That before the closing of the DCDC-Lorton, Va.facilities, the Plaintiff along with forty(40) other prisoners was transfered to the USP-Atlanta, Ga.FBOP Facility. He was being domiciled more than 500 miles away from his home-base in Washington, D.C. ..(something the U.S. Attorney General said he would not do to DCDC-prisoners. Thus, the Plaintiff in 2003 requested that he be transfered closer to home base-Washington, D.C. so as to be able to get a visits. The USP-Atlanta caeworker therefore, put the Plaintiff on the list for transfer to a new facility opening up in Kentucky, USP-Big Sandy.

[27] That Defendant D. Quinones, should have know that if he left Plaintiff's property unsecuried in the USP-Atlanta R & D unit, that some of it if not all could get missing. Thus,he showed neligency and an total-indifference concerning the Plaintiff property that he took charge of and promise to take care of.

[28] That Defendant, R. Wiley, the former-warden of USP-Atlanta, Ga. was the chief policy making officer in the USP-Atlanta and should have known then his staff was unable to carry out his job properly and need assistance..in the R & D Unit. In fact the R & D Officer requested assistance a number of times to no avail...The Defendant's negligency, and indifference to the needs of R & D staff and lack of proper supervision cause the lost of the Plaintiff's property.

[29 that Defendant, Harley Lappin is the Director of the FBOP and it is his duty to see that all his staff are train properly and adequately supervised. He is the chief policy maker for the whole FBOP and should haveknown that the property policy was not being implimented properly in the USP-Atlanta Facility.

[30] That Defendant, Federal Bureau of Prisons is an agent and/or agency of the United States and is therefore subordinate to the . Anything it dose is as if the United States is doing it. It operated under the color of federal law and for the United States.

[31] That the United states is the proper Defendant under FTCA, and that all defendants sued in the Official Capacity are as though suing the United States. Therefore the Plaintiff ope to have a Judge trial under FTCA and supplimental juridiction 28U.S.C. §1367(a). That the United States is the representative government and as such consents to be sued and is the only proper person sued under FTCA, and takes the responsibility for the negligency and indifference of its' employees.

[32] That Defendants as individuals are sued in their individual capacities and a jury trial is demanded pursuant to 28 U.S.C.§1331 §1343 and 1346(b), and 42 U.S.C.§ 2000bb-1 and § 2000cc-1 and28U.S.C,§1367(a)

[33.] During the first days of December, 2003 the R & D office, Qun'anis, called Plaintiff, et al., over to the USP-Atlanta's R & D and gave up green army duffal bags with which to pack out on 12/2/03. Thus, that Tuesday Dec. 2, 2003 the Plaintiff with the of his celly and several friends packed his property in the bags and took it over to the . After waiting half a day for the inventory and boxing of the

said property OIC-Qun'anis (who was working by his self) informed the Plaintiff that he was not going to be able to get to the inventory of Plaintiff's property before it was time for him to go home. However,he informed the Plaintiff "if you leave your property here(infront of him) I'll make sure that all your property is shipped to USP-Big SAndy, no matter how many boxes it take." Thus, the Plaintiff was unable to get his property properly inventoried in this presence and be given a receipt for the same. Thusly, the inventory slip sent to USP-Big Sandy was dated December 8th, 2003. That means that the Plaintiff's property layed around the R & D Room at least six days before it was ever inventoried. Said property was given to the Plaintiff at Big Sabdy-USP onor about December 18th or 29th, 2003...

[34.] Plaintiff official transfer from USP-Atlanta, Ga. to USPB-Big Sandy took place on Wednesday December 3rd, 2003 agong with 20 other inmates. Thus when Plaintiff's property arrived at USP Big Sandy he was called thr R & D and it was inventoried and he was told to sign for it. He at that time informed the R & D Staff that some of his property was not there. He told to sign for what he got because that was all that they had been sent. Plaintiff was informed that if some of his property was missing then he should file a Federal tor claim. The plaintiff at that point was not sure of what all was missing from all the property he had left at the USP- Atlanta, Ga. facility but he knew that certain items was not there. Plaintiff requested a copy of both USP-Atlanta and USP Big Sandy's inventory slips. He was informed to put in a formal request for the USP-Atlanta inventory list and they would srnd it to him. Thus, the Plaintiff signed USP-Big Sandy inventory for the property that he gotten. The USP-Atlanta property slip had been signed by two staff persons in USP-Atlanta. Thus, when the plaintiff obtained both property slips be compared

them item for item. They both were the same. So the missing property was never listed on the USP-Atlanta, Ga. facility property slip inventory. Thus, the Plaintiff signed at USP-Big Sandy for what was delieved to him at the R & D , and not for the missing property!!!

[35.] Thusly, only after the Plaintiff was able to accest all the items missing from his property did he file the(attached) Plaintiff's Exhibet # 2 under the federal tort claim Act for damages on the property that was missing...to not avail!!! Thus this redress was and is permitted by law.

[36] That Warden Wiely, USP- Atlanta Was their Supervisor to the OIC, Qun'anis, and was responsible for seeing that office Qun'anis had the proper amount of assistance to secure properly all inmates propety in the R & D Room . This he did not do; for OIC-Qun'anis said that he need help in caring for and packging inmates property. He said he had requested assitance to no avail.

[37.] The Plaintiff after filing his tort clim on December 30, 2003 with the Southeast Regional Office Director he received on March 2, 2004 a missive ackownledging the receipt of Plaintiff's claim and that it had been filed as # TRT-SER-2004-02083, (said missive is attached hereto as Plaintiff's Exhibit #3).

38. That the PLaintiff have produced in Plaintiff's Exhibit #2's Affidavit a listing of all missing items and the commissary receipts showing when and where said items purchased. All the neccary and requested information was provided to the regional investigator that would show ownership of the missing property...to no avail. The denied pPlaintiff's claim...without ever even interviewing the Plaintiff or checking Plaintiff's claim out fully...It was a

clear denial of due process in the sham investigation. The date of said denial of Plaintiff's claim came on August 11, 2004...thereby giveing the Plaintiff leave to sue in the appropriate United States District Court. Thusly, it was the Southeast Regional Director's Office that had the whole resonsibility to see that the Plaintiff was give a just and proer investigation and that proper restitution was made. This he did not do and failed in his resonsibility ty the Plaintiff and the BOP!!!

THE CONSEQUENCES OF DEFENDANT's WRONGDOING

COUNT I : VIOLATIONS OF 28 U.S.C. Secs. 1331 and 1334...& 42 U.S.C. 2000bb-1 Etc...& 2000cc-1:

[39.] The Plaintiff here repeat and reallege paragraphs 1- 38 above as if fully stated here.

[40.] The Plaintiff is a Sunni Muslim and over the years have practiced his faith to the fullest. This have earned him much harassment,via., prison official confisation and distruction of both his legal and religious property time after time. It seem as though the many prison employees think that they can hurt you best taking your personally owned property...This have been the case in both the DCDC system and the BOP...It is a matter of record that this form of harassment has continued with me year after year.

[41.] That Defendants in their individual and official capacity acted under color of federal law and regulations in connection with the conduct alleged herein.

[42.] That the Defendants intentionally or through deliberate indifference denied Plaintiff's rights under the First and Fifth Amendments of the Constitution, also neligency and malice afore thought; and with a mean spirited intent to hurt the Plaintiff as a means of Islamaphobia.

[43.] That Defendants, acting under color of federal law and regulations denied Plaintiff proper, safe and reasonable care and inadequate man-power to opperate an efficient R AND D Unit. Many inmates were allowed in areas ehere they by regulations were not suppose to be by BOP regulations.

[44.] That Defendants acting under color of federal law and regulations maintained and /or executed policies, prectices, customs and contracts that because of they negligent actions denied Plaintiff rights to his property and due process, under the First and Fifth Amendments to the Constitution...of these United States of America!

[45.] That Defendants, acting under color of federal law and regulations, failed to secure and pursue a course of neutrality toward Plaintiff's property, willy took Plaintiff's prayer rug, Holy Qun'an, Preyer Oils and religious magazines and newspapers...in violation of the BOP with respect to filing out confisational forms etc.,and with BOP Policy that allows and permits the same to be done...the destruction of newspapers and magazines (of a religious nature was a right the Plaintiff injoyed under the free exercise clause of the First amendment to the Constitution.

[46.] That Defendants, acting under color of federal law and regulations discriminated against Plaintiff by failing to properly investigate Plaintiff's federal tort claim,

thereby violating his rights to equal protection and due process in their one sided investigation.

[47.] That Defendants confiscations, and negligent actions were not reasonably related to any legitimate penal or custodial purpose.

[48.] That Defendants conduct was the results of evil malicous motives or intent and involed reckless or callous indifference to the Plaintiff's needs or federally protected rights.

[49.] And that as a direct and proximate result of said violations by individual Defendants or their subordinates, Plaintiff have suffered mental pain and hurt injuries which include but are not so limited to deprivation of loved and sacred religious items and Islamic literature of his faith that can not be replaced.

COUNT II: VIOLATION OF 42 U.S.C. SEC.2000bb-1(RFRA) 2000cc-1(RLUIPA) and 1st,4th & 5th Amendments:

[50.] Plaintiff restate and reallege paragraphs 1-59 as if fully states here.

[51.] That Defendants in their individual and official capacities acted under color of federal law and regulations in connection with all violations alleged herein.

[52.] That The Defendants intentionally or through deliberate indifference substantially burdened and pained Plaintiff's exercise of his religion by unlawful confiscation/taking Plaintiff's two Holy Qur'ans (of which he had owned for 20 and 15 years respectfully), Prayer

rug(which he had prayed on for over 20 years), Prayer Oils and magazines /newspapers...all in violation of the free exercise of Plaintif's rights under RFRA.

[53.] That Defendants acting under color of federal law and regulations failed to observe the letter of the BOP's policy and regulations that pertain to inventories of inmates property when they are being transfered, and they failed to observe the same policy when confiscating an inmates property...which was not done in furtherance of a compelling government interest...Thereby substantially burdening Plaintiff's free exercise rights under RFRA and "RLUIPA".

[54.] Thusly, as a direct and proximate result of said violations by Defendants and/or their subordinates. The Plaintiff have suffered and continue to suffer the lost anddeprivation, which include but are not limited to deprivational injuries of a mental nature for not being able to use the religious items in the practice of his faith...,substantially burdening the Plaintiff's practice of his faith in violation of his rights under "RFRA" and "RLUIPA"

[55.] The Defendants' acts and omissions with respect to proving proper inventory processing and filing of proper confiscation froms constituted a violation of FBOP Police and regulations issued undet FBOP-P.S.# 5580.06 ("Personal Property of Inmate" dated 7/19/99), and therefore, substantially burdened the Plaintiff rights under "RFRA"and Rluipa"; 28 US.C.§1331, §1343; 1346(b)...also the First, Fourth and Fifth Amendments to the Constitution.

PRAYER FOR RELIEF

WHEREFORE,the Plaintiff prays for a judgment in his favor and against the Defendants as follows:

[1] For compensatory damages against the United States in the amount of one-hundred and twenty-five thousand dollars ($125,000.00).

[2] For compensatory damages, from each individual Defendant in his individual/personal capacity, in the amount of fifty-Thousand dollars ($50,000.00).

[3] For punitive damages, each individual Defendant(other than the United States),in the amount of thirty-Thousand dollars ($30,000.00) each.

[4] For reasonable expenses, inclusive of Attorney fee and Court costs pursuant to 42 U.S.C. §1988...AND

[5] For Injunctive Relief, and for further relief asCourt determines to be just and proper.

Respectfully Submitted,

/s/ /s/_____

Abdus-Shahid M.S. Ali, Pro Se.,
USP-REG.No.03201-000
USP-Big Sandy/P.O.BOX-2068
Inez, Kentucky 41224

cc: Copies are sent to Counsel for
the Defendants: Stephen H. McCLain,
Assistant U.S. Attorney...at 600 U.S. Cousehouse
75 Spring Street, S.W.

Atlanta, Georgia 30303
[404] 581-6000

[CERTIFICATE OF SERVICE OMITTED]

PLAINTIFF'S EXHIBIT # 1

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA

Fulton County
Atlanta, Georgia

AFFIDAVIT

TO WHOM IT MAY CONCERN:

The Plaintiff, Abdus-Shahid M.S. Ali,being affirmed according to law and under penalty of perjury hereby states as follows;

1. That the Plaintiff is sentenced under the District of Columbia Code (D.C.C.) to the U.S. Attorney General. He was transfered into the Federal Bureau of Prisons just prior to the closing of the DCDC-Lorton-Central Facility...on the fourteenth of August, 2001...and Lorton close on or about October, 2001.

2. The plaintiff having been sent more than 500 miles fromhome requested (in 2003) his caseworker to be transfered closer to home. Said caseworker put Plaintiff in for a transfer to one of the newest USP's at Big Sandy in Inez, KY.,instead of the USP-Lewisburg, Pa. that the Plaintiff had requested.

3. During the week of December 1st, 2003 the Plaintiff was called to the USP-Atlanta receiving and Discharge(R & D) and given two green Army duffal bags. He was told to

bring all his property to the R & D on Tuesday morning(12-2-03).

4. This he did and on that morning Plaintiff waited in line all the morning to get his property inventoried so that it could be done in his presence. But that was not to be. At about 1:00PM the Plaintff was informed by OIC-Qun'anis(the R&D OFFICE IN CHARGE), that he would not have time to inventory anymore property before he he got off working and going home. OIC-Qun'anis informed the Plaintiff that he was the only staff person assigned to inventoring property of the inmates that were being transfered...He said that he had requested the administation for assistance to no avail. OIC-Qun'anis explained to the Plaintiff to leave his two open green army duffal bags right in front of in the property room doorway and that he would take care of it from there. He said that since I was not doing to be there then the inventory slip was made he would make sure that all my property was forwarded to USP-Big Sandy. OIC-Qun'anis said that he would get to it but it might not be before I was transfered out. He reassured the Plaintiff that he would make sure that all of the Plaintiff's property was boxed out even if he had to use more than two boxes limit to get all the property to USP-Big Sandy.

5. There being nothing he could do...the Plaintiff left all his property in the care of the R & D OIC-Qun'anis. The next morning Plaintiff was transfered from USP-AtLanta, Ga. to USP-Big Sandy along with 20 other inmates...on December 3, 2003.

6. The PLaintiff was called to USP-Big Sandy R & D to get his property, sent from the USP-Atlanta , Ga. on or about December 29, 2003. Said property was inventoried

and processed. Some was given to me, a few items was sent home and a few items was held entil approved via the chaplains office or tha warden's office. The Plaintiff found a number of items missing from his property left in the care of officer Qun'anis. Plaintiff did inform the USP -Big Sandy staff in the R & D about the missing items. Said staff informed the Plaintiff that there was nothing they could do about that and that the Plaintiff would haveto file a Federal Tort claim. The Plaintiff requested a copy of the USP-Atlanta, Ga. inventory claim...so as to compare the two inventory slips. The OIC-Big Sandy R & D staff person informed the Plaintiff"put in and official request form and they would send it to him." This he did. All the items listed on both forms were the same though not listed in the same order. The Plaintiff thus signed on Dec. 29, 2003 for the property he had received and seen at USP -Big Sandy. The property that was and is missing was not listed on the USP-Atlanta, Ga. inventory slip. Therefore either and staff person or an R & D inmates(Working within R & D) took the missing items out of the inmates'property before the property was inventoried. By information and belief the USP- OIC Qun'anis had been said to have taken muslim inmates Qun'ans and other religious items out of inmates property when he though they had more than one or when he for whatever reason thought items like pray rugs belonged to the chaplains' office. All of the items missing out of the plaintiff's property belonged to him and were either purchased in the canteen, or through the institutional process, or brought to the USP-Atlanta, Ga. on Agust 1st, 2001 transfer from the DCDC-Lorton, Va.Facility.

7. It is noted that the date the USP-Atlanta property slip inventory took place was December 8th, 2003. Thus, it is reasonable to beleive and access that Plaintiff's property

in the two open green duffal bags layed around the USP-Atlanta R & D for at least six(6) days before it was ever inventoried...Giving ample time for any staff or inmate to take or remove said missing items from the Plaintiff's duffal bags. The manner in which the Plaintiff's property was secured is a violation of the BOP policy.

8. With the USP-Atlanta, Ga. R & D having only one office running it Mr. Qun'anis, the OIC is forced to have a number inmates working for him in the Usp-Atlanta property Room. And upon information and belief they were stealing every thing that was not nailed down(so-to-speak). However, by BOP policy inmates are not allowed in the areawhere inmate property is suppose to be kept...BOP-Program Statement- # 5580.06 (Dated 7-19-99). Even the correctional staff is suppose to be limited into the property room.

9. The Plaintiff thus filed his federal tort claim to the BOP-Southeast Reginal Office Director , on December 30th, 2003. Said office acknowledged receipt on March 2, 2004...vir., Gere Gooden signing for Lisa M. Sunderman, Regional Counsel,

10. Thus, on August 11th, 2004 the Defendants rejected and denied the Plaintiff's claim without reaally investigating the items lost that Plaintiff canteen slips to show he had purchased certain items, Nor was the canteen slips cited in the original tort claim checked to see that all reported missing items were owned by the Plaintiff. If the investigatorys had done that then there would be no way they could have denied the tort claim!

11. The Defendants' investigation stated in pertinent part as follows :

" Our investigation reveals on December 18, 2003, January 29,2004 and March 24, 2004, you were issued your personal property at your current facility. You reviewed your personal property and signed section 10b. of the information. You did not inform staff of any discrepances or missing personal property. Further, you failed to provide documentation you had any of the alleged missing items in your possession prior to your transfer in 2003."

12. The above defendant's response is totally incorrect and wrong! The dates cited are all dates that was given to the plaintiff from the one and only shipment of property sent from the USP-Atlanta, Ga, on or abourt December 29, 2003...The Pklaintiff's missing property was never apart of the property sent to USP-Big Sandy. The dates listed were dates that some property was appoved by the staff chaplain's or by the warden's for the Plaintiff to have. All that property arrived at USP Big Sandy the same day. No documentation was requested of the plaintiff.

13. The Defendants cite in their missive of August 11, 2004 section 10 of form BP-383 as a "claim relest",(that is not ture!),which they are trying to say that by signing the USP-Big Sandy inventory slip that the Plaintiff signed away his rights to sue or file a claim against them. That possition is untenable by the defendants.

14. The Plaintiff never signed the USP-Atlanta, Ga. inventory(that was signed by USP-Atlanta Staff. But be did sign the USP-Big Sandy inventory slip for all the property that he had received from USP -Atlanta . That never was inclisive of the missing USP-Atlant,Ga. property.

15. The USP-Atlanta, Ga. inventory and the USP-Big Sandy inventory slips were the same... the two institutions just listed the different items in diferent listings. But the property sent was the same the USP-Big Sandy staff acknowledged and I siged for as haveing received the same. That had nothing to do with my missing property left in the USP-Atlanta care! Thus based an the above the Defendants denied the Plaintiff's claim. Thus the Plaintiff is now sueing the Defendants, for pain and suffering, troubles and dammages and court costs etc.

16. The Plaintiff affirms under the penalty of perjury that the statements cited above are true and correct to the best of his information and beliefs . The Same is affirmed here on this 4 day of October, 2004, before said notary public .

Respectfully submitted,

/s/ /s/_____
Abdus-Shahid M.S. Ali(#03201-000)

/s/_____
Notary Public

[SEE FOLDOUT PAGES FOR PLAINTIFF'S EXHIBIT # 2 PAGES 1-2]

BEST AVAILABLE COPY

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:	2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code)
Regional Director's Office Southeast Region 2800 Camp Creek Pkwy.SW, Bldg.2000 Atlanta, Georgia 30331	Abdus-Shahid M.S. Ali #03201-000 USP-Big Sandy///P.O.Box 2068 Inez , Ky.41224

3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. or P.M.)
☐ MILITARY ☒ CIVILIAN	3/26/44	None	Dec. 2nd truough8th, 2003	n/a

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)

The claimant was called to the USP Atlanta, Ga. R &D rm. to submit his personal property to the OIC. The OIC informed the claimant that there was a long wait and that because of all the property the claimant had he did not think that he was going to get to the Claimant's property. However, he said that if the claimant was to leave the said property right there in front of him he the OCI,Mr. Qun'anis, would inventory all the property and send all of it on to USP Big Sandy.

The claimant did not have a choice in the matter, as he was said to be leaving Wednesday morning 12-03-03. However, the date on the USP- Atl. ***See Next Attahed Page***

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

**********PLEASE SEE ATTACHED PAGE AND AFFIDAVIT**********

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

**********PLEASE SEE ATTACHMENT AND AFFIDAVIT**********

11. WITNESSES

NAME	ADDRESS (Number, street, city, State, and Zip Code)
Lenard Hull #o7005-021	USP ATLANTA, GA.,P.O.BOX /PMB 1000 601 Mc Donough blvd., S.E. Atlanta, Ga. 30315

12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)
Property was lost/ Property lost	N/A N/A	N/A	Total Cost $ 177.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)	13b. Phone number of signatory	14. DATE OF CLAIM
Abdus-Shahid M.S. Ali	N/A	12/30/03

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM	CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
The claimant shall forfeit and pay to the United States the sum of $2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)	Fine of not more than $10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)

95-109
Previous editions not usable.
Designed using Perform Pro, WHS/DIOR, Jun 98

NSN 7540-00-634-4046

STANDARD FORM 95 (Rev. 7-85) (EG)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the followings: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to which you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items - insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegation accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to: Director, Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes. If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. ☐ No

N/A---Claimant is a prisoner in the B.O.P. at USP-Big Sandy, Inez, Ky.

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

: N/A.....

17. If deductible, state amount

..NO: N/A

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? *It is necessary that you ascertain these facts*

N): N/A.....

19. Do you carry public liability and property damage insurance? ☐ Yes, if yes, give name and address of insurance company (Number, street, city, State, and Zip Code) ☒ No

N/A.

SF 95 (Rev. 7-85) BACK

PLAINTIFF'S EXHIBIT # 2 PAGE 3

Continues Item 8: (P.2 to Item#8–Bases of claim)

Georgia, property slip was/is December 8, 2003; which means that claimant's property (two(2) green duffal bags)lay in the property for at least five(5) days before the property OCI, Mr. Qun'anis, got around to packing and inventory claimant's property. The claimant did not get his property at USP Big Sandy until December 18, 2003.

All the claimant's property items were purchased in Atlanta U.S.P. canteen, except those items that were purchased or obtained in the Lorton Central Facility (D.C. Dept. of Corrections).

The USP Atlanta, Ga. R&D violated the F.B.O.P. Policy on Inmates Property by not inventorying said property in claimant's presence and having him sign property slip and receive a copy of the same.

The claimant's Canteen Slips which are on file in the USP Atlanta canteen files will show all items purchased over time in the U.S.P. Atlanta canteen. All other items on the lost property listing were gotten in the D.C.D.C. Lorton, Va.

Wherefore, the Claimant requests reimbursement for all lost items listed in the attached affidavit.

/s/ /s/ _____
Abdus-Shahid M.S. Ali
Fed. Reg. No. 03201-000

PLAINTIFF'S EXHIBIT # 2 PAGES 4-5

COUNTY OF MARTON
Inez, Kentucky
....AFFIDAVIT.....
(ON, LOST PROPERTY LEFT IN THE CARE
OF USP-ATLANTA, GA. OIC, QUN'ANIS-12/2/
.....

Comes now the Claimant, Abdus-Shahid M.S. Ali # 03201-000, being duely affirmed accornding to law do state as follows:Taht the statements below are all true and correct to the best of the Claimants knowledge.

MISSING PROPERTY LEFT IN THE
HAND OF THE USP ATLANTA OIC,
Qun'anis, R. & D. Officer

ITEMS MISSING FROM PROPERTY LEFT ///	COST FACTOR OF EACH ITEM
One(l) Holy Qur'an By Y. Ali (DCDC)	$20.00
One(l) Pocket Holy Qur'an By Y. Ali	$ 6.00
Three(3) Books of .37¢ stamps(USP Atl.)	$22.20
Six fifty Cent(.50¢) Stamps(DCDC)	$ 3.00
Three(3) .80¢ (purchase in DCDC) Stamps	$ 2.40
One (1) TracII Razor(DCDC)	$ 5.95
One (1) Pk of Trac II Blades (USP Atl)	$ 3.00
One(l) Watch Battery(DCDC)	$ 2.20
One(1) Mirror (USP Atl.)	$ 2.20
Eight(8) Color Markers (DCDC)	$ 7.50
Ten(10) Wash Cloths (purchased USP Atl.)	$ 4.00
One(l) Prayer Rug (purchased DCDC)	$20.00
One(1) MasterLock (USP Atl.)	$ 6.10
One(l) Thermal Top (puchased USP Atl)	$ 9.90

One(l) Thermal Bottom (USP Atl.)	$ 9.90
Two (2) Pks. Tube Socks (USP Atl)	$18.80
Five(5) Clothes Hangers (USP Atl.)	$ 1.25
One(l) U.S.P. Atlanta Commissary Card w/$7.00 on it	$ 7.00
Total Cost Factor	$ 177.00

* Please see the Claimant's Exhibits as evedenced herein!!!

/s/ /s/_____
Abdus-Shahid M.S. Ali
Reg. 03201-000
USP-Big SaNDY/P.O.Box 2068
Inez. Kentucky 41224

Be it affirmed and subscribed to before me on February 19th, 2004.

/s/ /s/_____
USP Big Sandy* Notary Public*

[SEAL]

[SEE FOLDOUT PAGE FOR PLAINTIFF'S EXHIBIT # 2 PAGE 6]

U.S. Department of Justice
Federal Bureau of Prisons

Inmate Personal Property Record
Institution: USP Atlanta

1. Name: Ali, Abdus-Shahid	2. Register Number: 03201-170	3. Unit: C H	4. Date and Time of Inventory: 8-14-01 10:20

5. Purpose of Inventory (check one that applies): Date and Time of Action: 8-14-01 10:20
a. ___ Admission b. ___ Hospital c. ___ Writ d. ___ Transfer e. ___ Detention f. ___ Release
g. ___ Incoming package h. ___ Other (specify)

6. Disposition (Disp.)
D - Donated M - Mail S - Storage
K - Keep in Possession
C - Contraband (Attach BP-Record-102)

7. Type of Property:

a. Personally Owned Items

#	Article	Disp.
	Batteries	K
	Belt	
	Billfold	
1	Books, religious hard 1, soft	K
17	Books, religious hard 12, soft 5	K
	Brassiere	
	Cap, Hat	
	Coat	
	Colon	
	Comb	
	Combination lock	
	Dress	
	Driver's license	
	Earplugs	
	Eyeglass case	K
	Eyeglasses	K
1	Gloves	M
	Hair brush/pick	
	Handkerchief	
	Jacket	
	Jogging suit	
	Legal Materials	
1	Letters	K
11	Magazines	K
	Mirror	
	Nail Clippers	
	Pen/shafts	
	Pen, ballpoint	
	Pencils	
1	Personal papers	K
	Photo album	
	Photos	

#	Article	Disp.
1	Plastic spoon; cup	K
	Playing cards	
	Purse	
	Radio (w/earplug)	
1	Religious medals	K
	Ring	
	Shirt/blouse	
	Shoes	
1	Shoes, shower	K
1	Shoes, slippers	M
1	Shoes, tennis	M
	Shorts	
	Skirt	
	Slip	
	Social security card	
	Socks	
	Socks, athletic	
	Stamps	
	Stockings	
	Sunglasses	
	Sweater	
2	Sweat pants	K
1	Sweat shirt	K
	Thighs	
	T-Shirt	
	Underwear	
1	Watch wrist/hand	K
1	Wig Medium length	K
1	Prayer Rug	K
1	Backpack	M
1	Cassette	K
1	Legal Paper	M
2	Key locks	M

b. Hygiene, etc.

#	Article	Disp.
	Dental floss	
	Deodorant	
2	Deodorant	K
	Hair oil	
	Hairpins	
	Powder	
	Razor	
	Razor blades	
	Shampoo	
	Shaving lotion	
	Skin lotion	
1	Soap	K
1	Soap dish	K
1	Toothbrush	K
2	Toothpaste	K
2	Misc Hygiene items	K

c. Food/Tobacco Items

#	Article	Disp.
	Canned tobacco	
	Chewing tobacco	
	Cigarettes	
	Cigars, snuff	
	Confectionate	
	Cold drink mix, soda	
	Fruit	
	Honey, Hi-protein	
	Instant chocolate	
	Instant coffee	
	Instant tea	
	Pipe cleaners/filters	
	Pipes	

d. Miscellaneous

#	Article	Disp.

e. Miscellaneous (List any donated property and from whom it was received, e.g., U.S. Marshal)

8. Items Alleged by Inmate to Have Value Over $100.00

Description of Property	Value Alleged by Inmate

☒ No individual item over $100.00

9. Article(s) Listed as "Mail" (M) Are to be Forwarded to (Name and Address of Consignee):

Civil Rights Corps, 713 Maryland Ave NE, Washington DC 20002

10. Claim Release: a. The receiving officer, as soon after receipt of the property as possible, will review the inventory with the inmate to verify its accuracy. Property that is stored, kept in possession of the inmate, mailed out of the institution, or donated is to be marked in the appropriate section of this inventory form. The receiving officer certifies receipt, review and disposition of the property by signing below. The inmate by signing below certifies the accuracy of the inventory, except as noted on the form, relinquishing of all claim to articles listed as donated, receipt of all allowable items, and receipt of a copy of the inventory. When the inmate claims a discrepancy in the inventory, the receiving officer shall attempt to resolve that discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under Comments.

Comments

Printed Name/Signature of Receiving Officer: K. Williams/K... Date: 8-14-01 Time: 10:20

I have today reviewed the property returned to me. Signature of Inmate: Abdus-Shahid Ali Reg. No.: 03201-170 Date: 8/14/01 Time: 1230 AM

b. Upon release of the inmate from the unit, detention, etc., the releasing officer is to give the inmate that property stored as a result of the inmate's housing. The inmate certifies release of the property, except as noted on this form, and receipt of a copy of the inventory by signing below. When the inmate claims a discrepancy in the inventory, the releasing officer shall attempt to resolve that discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under Comments.

Comments

Printed Name/Signature of Releasing Officer: _____ Date: _____ Time: _____

I have today reviewed the property returned to me. Signature of Inmate: _____ Reg. No.: _____ Date: _____ Time: _____

Original — Inmate's Central File; CC: Inmate, R & D, Special Housing

[SEE FOLDOUT PAGES FOR PLAINTIFF'S EXHIBIT # 2 PAGES 7-9]

Plaintiff's Exhibit #2 Page 1

USP ATLANTA-LIMITED OFFICIAL USE
HERRICK'S STATION

SALES INVOICE
ALI, ABDUS-SHAH
ACCOUNT No. 03201000 A P
11/05/01 Time 19:46:46 TXN 000029 16
BEGINNING BALANCES:
Available Balance is 302.64
Spending Limit Balance is 275.00
Account Balance is 302.64

QTY	DESCRIPTION	PRICE
1	COUNTRY CRNE	.55
1	COUNTRY CRNE	.55
2	BLUEBELL PINTS	2.80
2	SPRITE	1.10
1	CRNE	1.90
1	STRAWBERRY SODA	1.90
1	BLUEBIRD PINEAPPLE	2.50
1	BLUEBIRD PINEAPPLE	2.50
1	BLUEBIRD ORANGE JUC	2.50
1	BLUEBIRD GRAPEFRUIT JUC	2.50
3	FISH STEAK, DIN SOC	2.25
2	CHILI W/BEANS	1.70
2	BEEF STEW	1.90
1	TONE SKIN CARE	3.85
1	TONE SKIN CARE	.85
1	DIAL SOAP	.70
1	DIAL SOAP	.70
1	SNICKERS BAR (6PK)	1.30
1	PANASONIC "AA" BATT	4.35
1	ZESTA BEEFTAILS	2.70
2	DUNKING STICKS	2.50
2	RAMEN, CAJUN SHRIMP	.40
1	TWIN SUE-R	1.55
1	THERMAL TOPS	3.50
2	RAMEN, SPICY CHICK	.40
1	RAMEN, SPICEYBEEF	.50
2	RAMEN, BEEF FLAVOR	.40
1	RAMEN, BEEF FLAVOR	.20
1	RAMEN, CAJUN STYLE	.20
3	NON FILTER KING	4.95
1	PRE-COOKED RICE	.99
1	SPANISH RICE/CHEESE	.50
1	HALLS MENTHO-LYPTUS	.60
1	HALLS MENTHO-LYPTUS	.60
1	PANASONIC "AAA" BATT	2.50
1	SLATE GRAY PITCHER	2.95
1	GENERAL BOWL MALID	.60
1	MUSTACHE SCISSORS	6.10
1	GARLIC BULBS	.45
1	GARLIC BULBS	.45
1	CERTS PEPPERMINT	.55
1	COCOA BUTTER STICK	11.25
1	PEN	.55
1	PEN	.25
1	WASHCLOTHS	.40
1	WASHCLOTHS	.40
	SUB TOTAL	77.70
	TOTAL	77.70
	CHARGE 03201000	77.70

ENDING BALANCES:
Available Balance is 1,814.94
Spending Limit Balance is 197.30
Account Balance is 1,814.94

Signature
HOLIDAY, MONDAY NOVEMBER 12

This also shows that More Thermal Tops were purchased in the US. P-Atl. But did not Arrival at the U.S.P. Big Stone

A.S.M.S.A.

nicholette are also missing & will be picked that were purchased in the US P-Atl. station.

A.S.M.S.A.

USP ATLANTA-LIMITED OFFICIAL USE
ALFYE'S STATION

SALES INVOICE
ALI, ABDUS-SHAH
ACCOUNT No. 03201000 A P
06/17/02 Time 18:46:46 TXN 000059 69
BEGINNING BALANCES:
Available Balance is 3,827.91
Spending Limit Balance is 150.70
Account Balance is 3,227.91

QTY	DESCRIPTION	PRICE
2	BLUEBELL PINTS	2.90
1	COUNTRY CRNE	.60
1	SNICKERS ICE CREAM	.80
1	COFFEECREAMER	1.30
1	COFFEECREAMER	1.30
4	BEEF MAYONAISE	3.00
1	NEWPORT KINGS PACK	3.65
1	FRZ DRIED COFFEE	2.45
1	SNICKERS BAR (6PK)	2.80
4	IVORY SOAP	2.80
1	INSTANT TEA	1.65
1	HOUSE THONGS	.90
4	RAMEN, CAJUN SHRIMP	1.60
1	BLUEBIRD PINEAPPLE	2.60
1	BLUEBIRD PINEAPPLE	2.60
1	BLUEBIRD ORANGE JUC	2.60
1	BLUEBIRD GRAPEFRUIT JUC	2.60
1	CALIFORNIA MIX	.85
1	CALIFORNIA MIX	.85
14	RAMEN GARLIC SPICE	11.60
10	RAMEN GARLIC SPICE	10.00
5	MACKEREL (PKT)	5.25
1	PANASONIC "C" BATT	2.35
1	MASTER COMBO LOCK	6.10
2	PRE-COOKED RICE	1.98
4	BUTTER POPCORN	2.00
4	SPANISH RICE/CHEESE	2.00
1	BEEF MAYONAISE	.75
2	STRAWBERRY SODA	3.90
1	HALLS MENTHO-LYPTUS	.65
1	HALLS MENTHO-LYPTUS	.65
1	SPRITE	1.95
1	SPRITE	1.95
1	PANASONIC "AAA" BATT	2.50
1	BBQ CORN CHIPS	2.20
1	BBQ CORN CHIPS	2.20
7	GRAY LAYS	9.80
1	T-4000 BEARD TRIM	25.00
1	SONY SPRINTER RADIO	20.80
1	VENDING MACH. SALES	15.00
1	VENDING MACH. SALES	-2.00
4	IVORY SOAP	-2.80
2	IRISH SPRING SOAP	1.60
1	VENDING MACH. SALES	2.00
	SUB TOTAL	150.00
	TOTAL	150.00
	CHARGE 03201000	150.00

ENDING BALANCES:
Available Balance is 3,077.91
Spending Limit Balance is .70
Account Balance is 3,077.91

Signature
CLOSED FOR INVENTORY 6/24-6/28, 2002

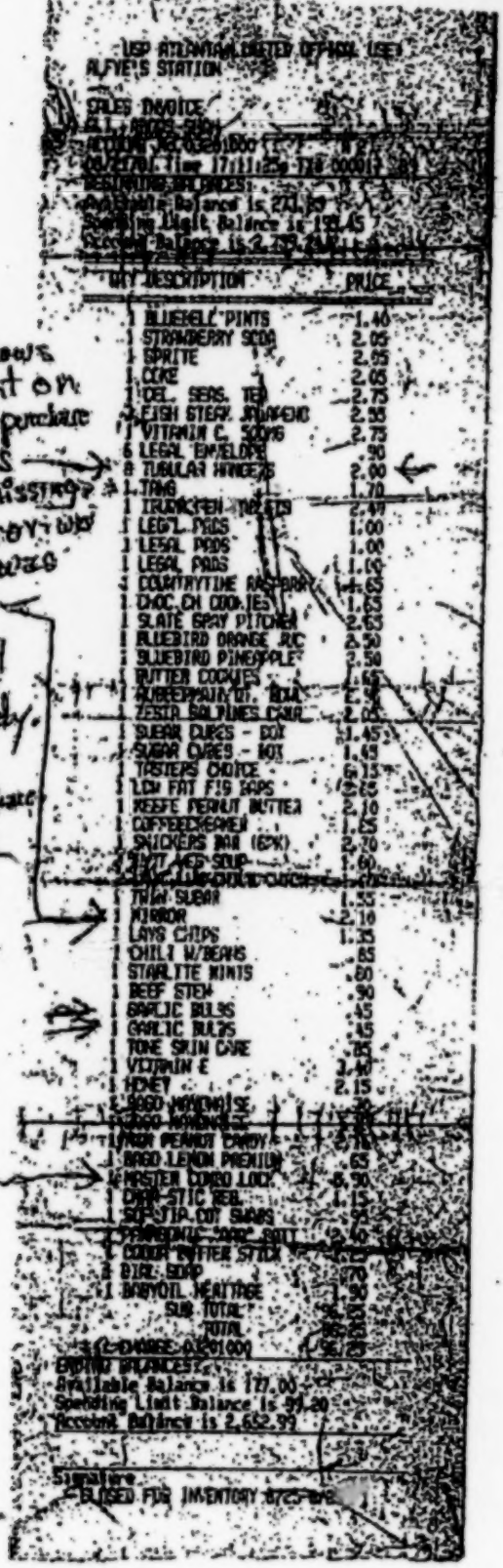
ASMSA

Purchase of master Lock

This Slip shows that the claimant did purchase a Beard Trimmer that was taken out of claimant property in the U.S.P-Atl.

ASMSA.

Claimant's Exhibit # "4"



USP ATLANTA,GA(FED OFFICIAL USE)
ALVIE'S STATION

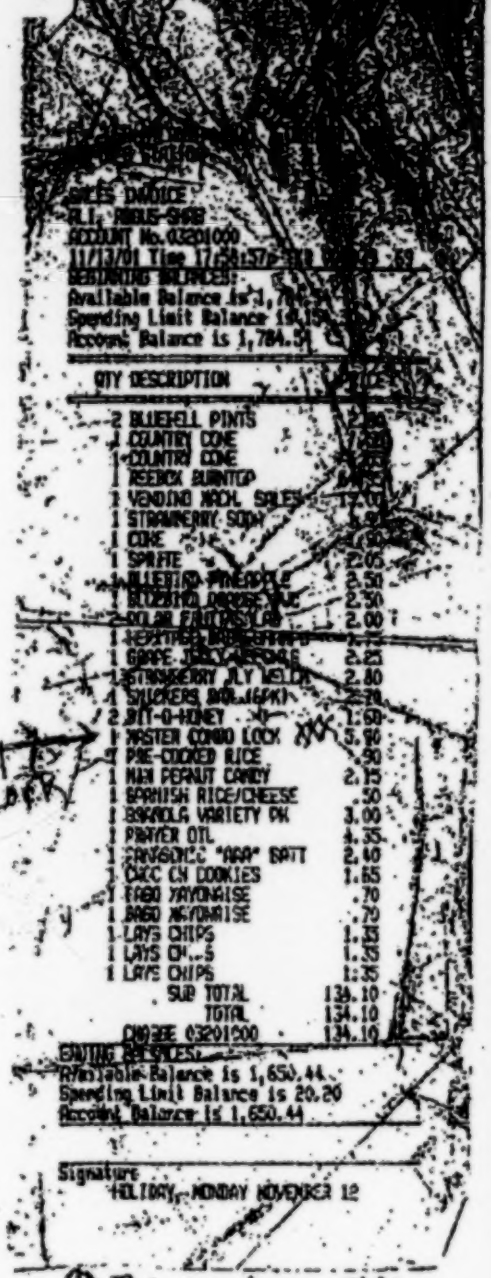
SALES INVOICE
RL1 RRRR5-5983
ACCOUNT No.03201000
11/13/01 Time 17:11:29 TXN 000017 83
BEGINNING BALANCES:
Available Balance is 221.59
Spending Limit Balance is 191.45
Account Balance is 2,283.59

QTY	DESCRIPTION	PRICE
1	BLUEBELL PINTS	1.40
1	STRAWBERRY SODA	2.05
1	SPRITE	2.05
1	COKE	2.05
1	DEL. SEARS, TED	2.75
1	FEISH STEAK SEASONING	2.55
1	VITAMIN C, 500MG	2.75
6	LEGAL ENVELOPE	.90
8	TUBULAR HANGERS	2.00
1	TANG	1.70
1	IRONSCREEN TOILETRY	2.49
1	LEGAL PADS	1.00
1	LEGAL PADS	1.00
1	LEGAL PADS	1.00
1	COUNTRYTIME RASPBERRY	1.65
1	CHOC CH COOKIES	1.65
1	SLATE GRAY PITCHER	2.65
1	BLUEBIRD ORANGE JUC	2.50
1	BLUEBIRD PINEAPPLE	2.50
1	BUTTER COOKIES	1.65
1	RUBBERMAID QT. BOWL	2.99
1	ZESTA SALTINES CRKR	2.05
1	SUGAR CUBES - BOX	1.45
1	SUGAR CUBES - HOT	1.49
1	TASTERS CHOICE	6.13
1	LOW FAT FIG BARS	2.63
1	REESE PEANUT BUTTER	2.10
1	COFFEEMAKER#1	1.85
1	SNICKERS BAR (6PK)	2.70
1	BUTT-NUT SOUP	1.60
1	TWIN SUGAR	1.55
1	MIRROR	2.10
1	LAYS CHIPS	1.35
1	CHILI W/BEANS	.85
1	STARLITE MINTS	.80
1	BEEF STEW	.90
1	GARLIC BULBS	.45
1	GARLIC BULBS	.45
1	TONE SKIN CARE	.85
1	VITAMIN E	3.40
1	HONEY	2.15
1	BAGD MAYONAISE	.70
1	LEMON PEANUT CANDY	2.70
1	BAGD LEMON PREMIUM	.65
1	MASTER COMBO LOCK	8.90
1	DEOD-STIC REG	1.15
1	SUP-TIP COT SWABS	.99
1	COCOA BUTTER STICK	2.40
1	BAR SOAP	.70
1	BABYOIL HERITAGE	1.30
	SUB TOTAL	85.25
	TOTAL	85.25
	CHARGE 03201000	85.25

ENDING BALANCES:
Available Balance is 177.00
Spending Limit Balance is 91.20
Account Balance is 2,652.99

Signature
BLESSED FOR INVENTORY PURPOSES

This slip shows that Claimant on 8/21/01 did purchase clothes hangers which were missing. Also a Mirror was purchased and was also missing from property on arrival at USP-Big Sandy. Also another Lock was purchased on this date



SALES INVOICE
RL1 RRRR5-5983
ACCOUNT No.03201000
11/13/01 Time 17:28:57 TXN [illegible]
BEGINNING BALANCES:
Available Balance is 1,784.59
Spending Limit Balance is 1,[illegible]
Account Balance is 1,784.59

QTY	DESCRIPTION	PRICE
2	BLUEBELL PINTS	2.80
1	COUNTRY COKE	2.05
1	COUNTRY COKE	2.05
1	REEBOK BURNTOP	84.99
1	VENDING MACH SALES	17.00
1	STRAWBERRY SODA	2.05
1	COKE	2.05
1	SPRITE	2.05
1	BLUEBIRD PINEAPPLE	2.50
1	BLUEBIRD ORANGE JUC	2.50
2	DOLLAR FAN PASTELS	2.00
1	KEYSTONE BAR SOAP 6-B	2.99
1	GOOSE JERKY ORIGINAL	2.25
1	STRAWBERRY JLY MELLO	2.80
4	SNICKERS BAR (6PK)	2.70
2	BUTT-O-HONEY	1.60
1	MASTER COMBO LOCK	5.90
2	PRE-COOKED RICE	.90
1	MIX PEANUT CANDY	2.15
1	GARNISH RICE/CHEESE	.50
1	BANANA VARIETY PK	3.00
1	PRAYER OIL	4.35
1	DEODORIZ "ODR" BATT	2.40
1	CHOC CH COOKIES	1.65
1	BAGD MAYONAISE	.70
1	BAGD MAYONAISE	.70
1	LAYS CHIPS	1.35
1	LAYS CH..S	1.35
1	LAYS CHIPS	1.35
	SUB TOTAL	134.10
	TOTAL	134.10
	CHARGE 03201000	134.10

ENDING BALANCES:
Available Balance is 1,650.44
Spending Limit Balance is 20.20
Account Balance is 1,650.44

Signature
HELIDAY, MONDAY NOVEMBER 12

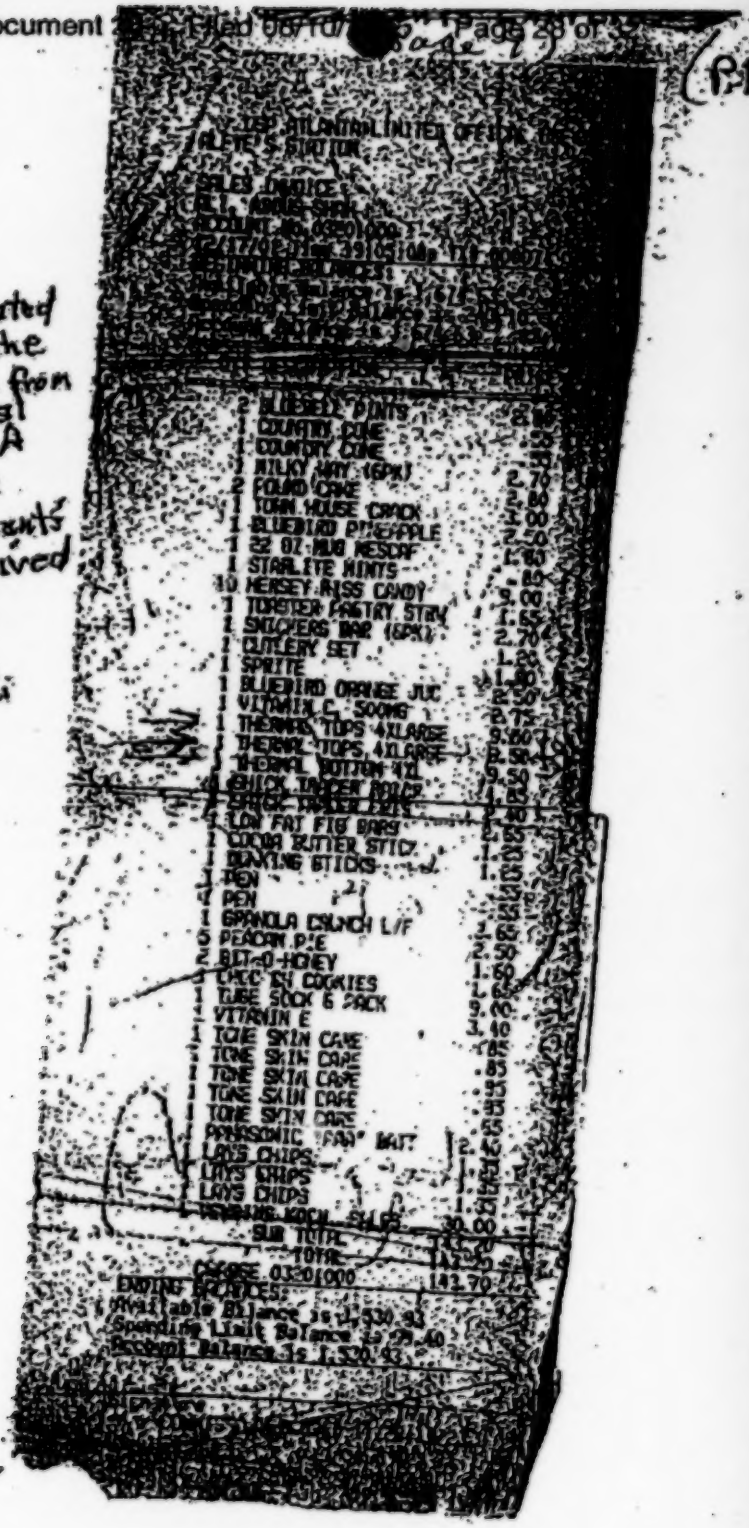
LOCK

This canteen slip shows that A Master Combonat Lock was purchased in the USP Atlanta Canteen on 11/13/01; it was missing from claimants property upon it arrival at USP-Big Sandy.

A.S.M.S.Ali

Note: This exhibit dated 12/17/01 shows that the claimant did purchase from the USP canteen Thermal Tops and and bottoms. A set of the same was missing from the Claimants Property when it arrived USP-Big Sandy!!!

-A.S.M.S.A.L.



PLAINTIFF'S EXHIBIT # 3

U.S. Department of Justice
Federal Bureau of Prisons
Southeast Region
Building 2000
3800 Camp Creek Parkway, SW
Atlanta, Georgia 30331-6226

March 2, 2004

Abdus-Shahid Ali
Reg. No. 03201-000
USP BSY
P. O. Box 2068
Inez, KY 41224

RE: Administrative Claim Receipt: #TRT-SER-2004-02083

Dear Claimant:

This acknowledges receipt of an administrative claim you are filing for alleged personal injury and/or damage to or loss of personal property. The claim was accepted for filing on February 20, 2004, by the agency involved in your alleged loss/injury.

The Government is afforded six months from the date the claim is receipted to make a determination regarding your claim. An answer to your claim will be mailed on or before August 18, 2004.

In order for us to properly investigate this claim, you will need to provide a complete copy of all records (do not send originals as they will not be returned) in your possession

relating to this claim as well as a detailed description of the events surrounding the alleged loss. **If you have previously provided this information, please disregard this portion of this notice.**

You are advised that failure to provide this information may result in delay in processing, or prejudice the outcome of your claim. Additionally, you are advised that it is your responsibility to keep this office apprised of your present address.

Sincerely,

/s/
for Lisa M. Sunderman
Regional Counsel

PLAINTIFF'S EXHIBIT # 4

U.S. Department of Justice
Federal Bureau of Prisons
Southeast Regional Office
3800 Camp Creek Parkway, SW
Building 2000
Atlanta, Georgia 30331-6226

August 11, 2004

RETURN RECEIPT
7000 0600 0024 8061 0604
Abdus-Shahid Ali
Reg. No. 03201-000
USMCFP SPG
P.O. Box 4000
Springfield, MO 65801-4000

RE: Administrative Tort Claim Number TRT-SER-2004-02083

Dear Claimant :

Your claim has been considered for administrative settlement under the Federal Tort Claims Act (FTCA), Title 28 United States Code (U.S.C.) Section 2672 et seq., and authority granted by Title 28 Code of Federal Regulations (C.F.R.) Section 0.172. You claim government liability in the amount of $177 as compensation for personal property loss.

Section 2672 of the FTCA delegates to each federal agency the authority to consider, determine and settle any claim for money damages against the United States for loss of

personal property or injury caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment.

You allege following your transfer from the United States Penitentiary (USP) in Atlanta, Georgia, on December 8, 2003, staff failed to mail all your personal property. You contend you are missing numerous items. You included a typewritten list of alleged missing items along with a personal property inventory record dated August 14, 2001 and a number of commissary receipts dated in 2001. We have reviewed your claim and reports from appropriate staff members. Our investigation reveals on December 18, 2003, January 29, 2007, March 24, 2004, you were issued your personal property at your current facility. You reviewed your personal property and signed Section 10 b. of the completed BP-383 form certifying the accuracy of the information. You did not inform staff of any discrepancies or missing personal property. Further, you failed to provide documentation you had any of the alleged missing items in your possession prior to your transfer in 2003.

Section 10 of Form BP-383 is a "Claim Release" which reads in pertinent part, " . . . The inmate by signing below certifies the accuracy of the inventory, except as noted on the form, relinquishing of all claim to articles listed as donated, receipt of allowable items, and receipt of a copy of the inventory. When the inmate claims a discrepancy in the inventory, the receiving officer shall attempt to resolve that discrepancy. If the inmate states that there is missing or damaged property, this information should be noted under Comments." By signing Section 10 a. you relinquished any future claim to the items now alleged to be missing.

Based on the above, there is no evidence to indicate that you have sustained an injury or loss caused by the negligent or wrongful act or omission of any Bureau of Prisons' employee acting within the scope of his or her employment. Therefore, your claim is denied.

You are advised that if you are dissatisfied with our determination in this matter, you are afforded six (6) months from the date of the mailing of this communication within which to bring suit in the appropriate United States District Court.

Sincerely,

/s/
FOR Lisa M. Sunderman
Regional Counsel

cc: Warden, USP ATL
ATTN: FTCA Coordinator

[CERTIFICATE OF SERVICE OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 1:04-CV-02986-ODE

[Filed January 27, 2006]

Abdus-Shahid M.S. Ali	)
Plaintiff	)
	)
v.	)
	)
United States, Federal Bureau	)
of Prisons, Harley Lappin, R.	)
Wiley, & Daniel Quinones	)
Defendants	)
	)

ORDER

This pro se action brought under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346 and 2671 et seq., the Religious Freedom Restoration Act of 1993 ("Religious Freedom Act"), 42 U.S.C. § 2000bb et seq., the Religious Land Use and Institutionalized Persons Act of 2000 ("Institutionalized Persons Act"), 42 U.S.C. § 2000cc et seq., and the First, Fourth, and Fifth Amendments to the United States Constitution[1] is currently before the Court on

[1] For ease of reference, the Court will refer to Plaintiff's constitutional claims as *Bivens* claims. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (holding that injured plaintiffs can bring a cause of action for

Defendants' Renewed Motion to Dismiss [#21]. For the reasons discussed below, Defendants' Renewed Motion to Dismiss [#21] is GRANTED.

I. *Factual Background*

The following facts were taken from Plaintiff's Amended Complaint and are assumed to be true for purposes of ruling on the instant motion.

A. *Plaintiff's Lost Property*

Plaintiff is a Muslim, and his religious faith is Al-Islam. He currently is a federal prisoner at United States Penitentiary Big Sandy ("USP Big Sandy") in Inez, Kentucky. Plaintiff was a prisoner at United States Penitentiary Atlanta ("USP Atlanta") from August 1, 2001 to December 3, 2003. He was transferred from USP Atlanta to USP Big Sandy on December 3, 2003.

Before being transferred, prisoners must take their personal belongings to the prison's Receiving and Discharge Unit ("R&D Unit") so that their property may be inventoried, packaged, and sent to their new location. Plaintiff attempted to take his personal property to the R&D Unit at USP Atlanta on November 28, 2003. The officer in charge, Officer Daniel Quinones, told Plaintiff that he could not perform such a task because he was the only one on duty at the time. Officer Quinones told Plaintiff he would send for him when he had assistance in the R&D Office and could devote the time necessary to inventory and

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damages against federal officers for violation of constitutional rights).

package Plaintiff's property. On December 2, 2003 at 8 a.m., Officer Quinones called Plaintiff to the R&D Unit. Plaintiff waited there all morning. Officer Quinones again told Plaintiff that he was not available to inventory Plaintiff's property because he was the only one on duty. Officer Quinones told Plaintiff that if he left his property at the R&D Unit, he would "get to it in a day or so and . . . ship every thing . . . to USP Big Sandy." Am. Compl. ¶ 15. Plaintiff complied. He closed and locked the two duffle bags containing his property and left them in the R&D Unit with Officer Quinones. He was not present when his items finally were inventoried, packaged, and shipped on or around December 8, 2003.

Plaintiff was transferred to USP Big Sandy on December 3, 2003. According to Plaintiff, his duffle bags arrived at USP Big Sandy's R&D Unit on or about December 18 or 29, 2003.[2] Plaintiff noticed that some of his property was missing.

Staff at USA Big Sandy's R&D Unit told Plaintiff that he had to sign a form to receive his property. Plaintiff informed the R&D staff that some of his property was missing. Staff members told him "to sign for what he got because that was all that they had been sent. Plaintiff was informed that if some of his property was missing then he should file a Federal tor [sic] claim." *Id.* ¶ 34. Plaintiff signed for his property and began to record which items were missing. Plaintiff also reviewed the inventory slip filled out by Officer Quinones at USP Atlanta and

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[2] This may be a typographical error. Plaintiff may have meant December 18 or 19, 2003.

discovered that the missing property never was inventoried in Atlanta.

Many of the missing items were of religious and nostalgic significance to Plaintiff. Those items included the following:

QUANTITY	ITEM	VALUE
1	Holy Qur'an	$20.00
1	Pocket Holy Qur'an	$6.00
3	Books of $.37 Stamps	$22.20
6	$.50 Stamps	$3.00
3	$.80 Stamps	$2.40
2	Trac II Razor	$5.95
1	Pack of Trac II Blades	$3.00
1	Watch Battery	$2.20
1	Mirror	$2.20
8	Color Markers	$7.50
10	Wash Cloths	$4.00
1	Prayer Rug	$20.00
1	Masterlock	$6.10
1	Thermal Top	$9.90
1	Thermal Bottom	$9.90
2	Packs Tube Socks	$18.80
5	Clothes Hangers	$1.25
1	Atlanta Commissary Card with $7.00 on it	$7.00
	TOTAL VALUE	$177.00

Am. Compl. Ex. 2, p. 4. Plaintiff also states that "several bottles of oils" and five religious magazines titled "Al-Jumu'ah,"[3] were missing from his duffel bags.

B. *Discrimination on the Basis of Religion*

According to Plaintiff, the Federal Bureau of Prisons and its employees have discriminated against him on the basis of religion:

> That upon information and belief Muslim inmates especially since September 11, 2001 have been subjected to very hard times and bad treatment at the hands of both [Federal Bureau of Prison], State and Local prison employees. Reports from all over the Country have come in on the ir (Muslims)'s) [sic] property, especially religious property has been destroyed, confiscated, looted, lost stolen or taken without cause or justifications. These conditions takes [sic] on an Islamiaphobia (harassment) attitude.

Id. ¶ 23. Plaintiff also alleges that contempt for his religion was the reason that his property was not properly transferred to USP Big Sandy, claiming that it was intentionally destroyed:

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[3] Plaintiff admits that the Federal Bureau of Prisons has a policy on "not transferring magazines and newspapers, however, if the Plaintiff is not their [sic] to sent [sic] those items home, they should [sic] be mailed on the the [sic] receiving institution, and allow them to deal with the issues. . . . They should never just confiscate a persons [sic] property and do as they please with it." Am. Compl. ¶ 24.

> The Plaintiff is a Sunni Muslim and over the years have practiced his faith to the fullest. This have [sic] earned him much harassment, via., prison official confisation [sic] and distruction [sic] of both his legal and religious property time after time. It seem [sic] as though the many prison employees think that they can hurt you best taking your personally owned property . . . This have been the case in both the [District of Columbia Department of Corrections] system and the [Bureau of Prisons] . . . It is a matter of record that this form of harassment has continued with me year after year.

Id. ¶ 40.

C. *Procedural History*

Plaintiff filed an administrative claim through the Bureau of Prisons on December 30, 2003 with the Southeast Regional Office Director to recover the value of his lost items. On March 2, 2004, Plaintiff received a letter acknowledging his claim and informing him that the "Government is afforded six months from the date the claim is receipted to make a determination." *Id.* Ex. 3. On August 11, 2004, he received another letter from the Southeast Regional Office of the Federal Bureau of Prisons, indicating the following:

> Our investigation reveals on December 18, 2003, January 29, 2004, and March 24, 2004, you were assigned your personal property at your current facility. You reviewed your personal property and signed Section 10 b. of the completed BP-383 form certifying the accuracy of the information. You did not inform staff of any discrepancies or missing

> personal property. Further, you failed to provide documentation you had any of the alleged missing items in you possession prior to your transfer in 2003.
>
> . . .
>
> Based on the above, there is no evidence to indicate that you have sustained an injury or loss caused by the negligent or wrongful act or omission of any Bureau of Prisons' employee acting within the scope of his or her employment. Therefore, your claim is denied.

Id. Ex. 4, pp. 1-2.

Plaintiff filed this action on October 12, 2004 against the Federal Bureau of Prisons, Harry Lappin (Director of the Federal Bureau of Prisons), R. Wiley (Warden at USP Atlanta), Officer Quinones, and R.E. Holt (Southeast Regional Director for the Federal Bureau of Prisons). Defendants' original Motion to Dismiss [#19] related to this Complaint. After Defendants filed said motion, Plaintiff filed an Amended Complaint on August 10, 2005, removing Mr. Holt and adding the United States as a Defendant. Defendants renewed their Motionn to Dismiss [#21], which the Court addresses below.

Count I asserts a claim under the Federal Tort Claims Act (presumably to recover the value of his lost property),[4]

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[4] Considering the latitude generally afforded pro se plaintiffs, *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1161 (11th Cir. 1993), the Court will assume that Plaintiff seeks to recover the value of

as well as violations of the Religious Freedom Act and Institutionalized Persons Act. Count II seems to reassert the claims in Count I and additionally asserts violations of the First, Fourth, and Fifth Amendments. Plaintiff seeks compensatory damages in the amount of $125,000 from the United States and $50,000 from each individual defendant, $30,000 in punitive damages from each individual defendant, costs, and injunctive relief.

II. *Defendants' Renewed Motion to Dismiss*

A. *Standard for Motion to Dismiss*

Federal Rule of Civil Procedure 12(b)(1) empowers the Court to dismiss claims for lack of jurisdiction over the subject matter. Under Federal Rule of Civil Procedure 12(b)(6), the Court may grant a defendant's motion to dismiss when a complaint fails to state a claim upon which relief can be granted. The pleadings are construed broadly so that all well-pleaded facts[5] are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. *Cooper v. Pate,* 378 U.S. 546, 546 (1964); *Conner v. Tate,* 130 F. Supp. 2d 1370, 1373 (N.D. Ga. 2001). A motion to dismiss should only be granted when "it appears

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his lost property despite the fact that his Prayer for Relief does not make such a request.

[5] In contrast to alleged "facts," a district court is not required to accept conclusory allegations or unwarranted factual deductions as true. *Purvis v. City of Orlando,* 273 F. Supp. 2d 1321, 1324 (M.D. Fla. 2003). Likewise, the court need not "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain,* 478 U.S. 265, 286 (1986); *see also Purvis,* 273 F. Supp. 2d at 1324.

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957); *see Linder v. Portocarrero,* 963 F.2d 332 (11th Cir. 1992).

When resolving such a motion, the Court is typically constrained to look only to the pleadings and exhibits incorporated therein. Fed. R. Civ. P. R. 10(c), 12(b). The United States Court of Appeals for the Eleventh Circuit, however, has additionally permitted reference to a document attached to a motion to dismiss but only where the attached document is "central to the plaintiff's claim" and is "undisputed" in the sense that "the authenticity of the document is not challenged." *Horsley v. Feldt,* 304 F.3d 1125, 1134 (11th Cir. 2002); *see also Day v. Taylor,* 400 F.3d 1272, 1276 (11th Cir. 2005) (same).

B. *Plaintiff's Claim Under the Federal Tort Claims Act*

Defendants argue that Plaintiff's FTCA claim is barred by the doctrine of sovereign immunity and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

In enacting the FTCA, Congress waived sovereign immunity and made the United States liable "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 1346(b). United States district courts have original jurisdiction over such actions. *Id.* § 1346(a). Congress excluded certain types of claims from the FTCA, retaining sovereign immunity with respect to those exclusions. The exclusion relevant to this lawsuit covers "any claim arising in respect of . . . the detention of any goods or merchandise by any officer of customs or

excise or any other law-enforcement officer." 28 U.S.C. § 2680(c).

The relevant issue is whether the exclusion in § 2680(c) applies to losses arising from a detention of property. Defendants attached as an exhibit to their Motion to Dismiss the unpublished opinion of the United States Court of Appeals for the Eleventh Circuit in *Agunbiade v. Federal Bureau of Prisons,* No. 02-11353 (11th Cir. Sept. 23, 2002). The facts in *Agunbiade* are virtually identical to the facts now before this Court. Agunbiade was a prisoner at USP Atlanta who was being transported to a federal correction institution in Minnesota. Employees for the Federal Bureau of Prisons were responsible for transferring his property to Minnesota, and certain items were lost en route. The Court held that the district court did not err "in finding that the [Bureau of Prisons] and USP-Atlanta employees had detained Agunbiade's property within the meaning of 28 U.S.C. § 2680(c)." Therefore, Agunbiade's claim against the United States was not authorized by the FTCA.

Plaintiff's case is factually equivalent to *Agunbiade.* Although the Court is not bound to reach the same outcome,[6] it does find that *Agunbiade* is persuasive authority for holding that Plaintiff's claim falls within the exclusion to the FTCA in § 2680(c).[7] Therefore, it is barred

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[6] "Unpublished opinions are not considered binding precedent." 11th Cir. R. 36-2.

[7] The Court notes that other federal courts are in accord with this outcome. *See, e.g., Kosak v. United States,* 465 U.S. 848, 854 (1984) ("[W]e think that the fairest interpretation of the crucial portion of the provision is the one that first springs to mind: 'any claim arising in respect of the detention of goods means any claim

by the doctrine of sovereign immunity and must be dismissed for lack of subject matter jurisdiction.

C. *Plaintiff's Other Claims*

Defendants assert that Plaintiff's claims under the Religious Freedom Act, Institutionalized Persons Act, and *Bivens* should be dismissed because Plaintiff has not exhausted his administrative remedies as required by the Prison Litigation Reform Act of 1995.

The Prison Litigation Reform Act of 1995 provides that "[n]o action shall be brought . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The exhaustion requirement applies to FTCA claims and *Bivens* claims, as well as claims under the Religious Freedom Act, the Institutionalized Persons Act,

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'arising out of' the detention of goods, and includes a claim resulting from negligent handling or storage of detained property."); *Parmelee v. Carlson*, 77 F.3d 486 (8th Cir. 1996) (table case) ("Parmelee's suit arises out of the detention of his property, notwithstanding the subsequent alleged loss of his property."); *Bramwell v. United States Bureau of Prisons*, 348 F.3d 804, 807 (9th Cir. 2003) (holding that a claim for damaged glasses resulting from detention of plaintiff's coat was excluded by § 2680(c)); *see also Haughton v. Fed. Bureau of Investigation*, 1999 U.S. Dist. LEXIS 19031, *17 (S.D.N.Y. 1999); *United States v. Chambers*, 92 F. Supp. 2d 396, 401 (D.N.J. 2000); *Johnson v. United States*, 2000 U.S. Dist. LEXIS 9815, *8 (D. Kan. 2000); *Wilson v. U.S.*, 2001 U.S. Dist. LEXIS 9652 *5, (D. Kan. 2001). *But see Alliance Assurance Co. v. United States*, 252 F.2d 529, 534 (2d Cir. 1958) ("The conclusion is inescapable that [Congress] did not choose to bestow upon all such agencies general absolution from carelessness in handling property belonging to others."); *A&D Int'l, Inc. v. United States*, 665 F.2d 669 (Former 5th Cir. 1982).

and all other federal and constitutional claims. *See McNeil v. United States,* 508 U.S. 106, 107 (1993) (FTCA claims); *Alexander v. Hawk,* 159 F.3d 1321, 1324 (11th Cir. 1998) (*Bivens* claims); *Cutter v. Wilkinson,* 125 S. Ct. 2113, 2123 n.12 (2005) (noting that the exhaustion requirement in the Prison Litigation Reform Act § 1997e applies to claims under the Institutionalized Persons Act).

The administrative remedy scheme in the Federal Bureau of Prisons provides three tiers for handling grievances: (1) a request to the Warden; (2) an appeal to the Regional Director; and (3) an appeal with the General Counsel for the Federal Bureau of Prisons. Only after pursuing all three tiers within the prescribed time limits may a Plaintiff file a federal claim in district court. While Plaintiff has alleged – and Defendants concede – that Plaintiff exhausted his administrative remedies for his FTCA claim, Defendants submit evidence showing that Plaintiff has not exhausted his administrative remedies for the other claims. They proffer the unsworn declaration of Clinton Stroble, Assistant Regional Counsel for the Southeast Regional Offices of the Federal Bureau of Prisons, which indicates that Plaintiff has not exhausted his administrative remedies with respect to these claims:

> Plaintiff has not exhausted his administrative remedies regarding the claims raised in his Complaint. Plaintiff has filed approximately 10 administrative remedies at various levels. Of the 10 administrative remedies, only three relate to any religious matter. The Plaintiff filed Request for Administrative Remedy 271586-F1, regarding him his [sic] he was denied Jumuah Prayer Service. This request was received on or about July 1, 2002. On or about August 2, 2002, the Plaintiff was provided an

> explanation and the claim was closed. The Plaintiff did not appeal this administrative remedy. The Plaintiff Request for Administrative Remedy 371777-F1, on or about March 31, 2005, raising numerous claims regarding religious beliefs. None of the matters raised in this administrative remedy related to the claims he raised in this instant action. On or about April 22, 2005, the Plaintiff's administrative remedy was denied. The Plaintiff appealed this decision by filing Regional Administrative Appeal 371777-R1 on or about June 13, 2005. This appeal was rejected on or about June 17, 2005, because it had too many continuation pages and it was also filed in the wrong Regional Office. There is no evidence the Plaintiff has taken any further appeal of this administrative remedy.

Defs.' Mem. Supp. Mot. to Dismiss Ex. 1, pp. 2-3.

In his Opposition to Defendant's Motion, Plaintiff seems to argue that Defendants misled him to believe that by filing an administrative claim for the loss of his property, he satisfied the exhaustion requirement with respect to all possible claims (including the claims under the Religious Freedom Act, Institutionalized Persons Act, and *Bivens*). Plaintiff was told that "when you file a FTCA-standard form '95', you do not have [sic] exhaust your general administrative remedy." Pl.'s Resp. to Defs.' Mot. to Dismiss ¶ 13. Plaintiff cites a case from the Western District of New York, which held that exhaustion may not be required when prison guards or other officials mislead a prisoner into believing that he had taken all the appropriate steps to pursue his claims in federal court. *Lane v. Doan*, 287 F. Supp. 2d 210, 212 (W.D.N.Y. 2003). However, *Lane* and the cases upon which it relies are

inapposite to Plaintiff's situation. The statement made to Plaintiff about filing a standard-form 95 specifically related to his FTCA claim. That statement was true, and Plaintiff indeed exhausted his administrative remedies with respect to that claim. However, Plaintiff does not allege that he was told that the standard form 95 also exhausted his administrative remedies with respect to his other claims. Therefore, even if the Court were to adopt the holding in *Lane,* Plaintiff does not establish the existence of a misrepresentation that would excuse having to exhaust his administrative remedies on his other claims.

Plaintiff also argues that it would be inefficient to dismiss without prejudice his unexhausted claims, only to hear them again after Plaintiff exhausts his remedies at some point in the future. Plaintiff's concern with efficiency is flawed for two reasons. First, Plaintiff seems to miss the point of the exhaustion requirement. As explained by the Eleventh Circuit, the rationale for requiring exhaustion is seven-fold:

> (1) to avoid premature interruption of the administrative process; (2) to let the agency develop the necessary factual background upon which decisions should be based; (3) to permit the agency to exercise its discretion or apply its expertise; (4) to improve the efficiency of the administrative process; (5) to conserve scarce judicial resources, since the complaining party may be successful in vindicating rights in the administrative process and the courts may never have to intervene; (6) to give the agency a chance to discover and correct its own errors; and (7) to avoid the possibility that "frequent and deliberate flouting of the administrative processes

> could weaken the effectiveness of an agency by encouraging people to ignore its procedures."

Alexander, 159 F.3d at 1327 (quoting *Kobleur v. Group Hospitalization & Med. Svcs., Inc.*, 954 F.2d 705 (11th Cir. 1992)). Thus, while a dismissal without prejudice may seem inefficient to Plaintiff in the short-run, adhering to the exhaustion requirement accomplishes the long-term efficiency goals announced in *Alexander* and *Kobleur*. Second, there are situations when a dismissal without prejudice for failure to exhaust will effectively bar a prisoner's claim. For instance, if the time to file a grievance or to appeal an administrative ruling lapses while a prisoner's case is pending in district court, a dismissal without prejudice will be the end of the matter. In this hypothetical situation, it would be impossible for the prisoner to perfect his right to refile the action in district court.

The Court finds that Plaintiff has not exhausted his administrative remedies with respect to his claims under the Religious Freedom Act, Institutionalized Persons Act, and *Bivens* and dismisses them without prejudice.

III. *Conclusion*

For the foregoing reasons, Defendants' Renewed Motion to Dismiss [#21] is GRANTED. The Court dismisses with prejudice Plaintiff's claim under the Federal Tort Claims Act, and it dismisses without prejudice Plaintiff's other claims under the Religious Freedom Act, Institutionalized Persons Act, and *Bivens*.

SO ORDERED, this 26 day of January, 2006.

/s/

ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-11468
Non-Argument Calendar

[Filed October 19, 2006]

[DO NOT PUBLISH]

ABDUS-SHAHID M.S. ALI,	)
Plaintiff-Appellant,	)
	)
v.	)
	)
FEDERAL BUREAU OF PRISONS,	)
MR. LIPPIN, Dicrector of F.B.O.P,	)
WARDEN R. WILEY, U.S.P. Atlanta	)
MR. QUN'ANIS,	)
UNITED STATES,	)
Defendants-Appellees,	)
	)
SOUTHEAST REGIONAL DIRECTOR,	)
Defendant.	)
	)

D.C. Docket No. 04-02986-CV-ODE-1

Appeal from the United States District Court
for the Northern District of Georgia

Before ANDERSON, BIRCH and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Abdus-Shahid M.S. Ali ("Ali") appeals the district court's dismissal of his civil action brought pursuant to: (1) the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346 and 2671 *et seq.*; (2) the Religious Freedom Restoration Act of 1995 ("RFRA"), 42 U.S.C. 2000bb *et seq.*; (3) the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUA"), 42 U.S.C. § 2000cc *et seq.*; (4) and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 395, 91 S.Ct. 1999, 2004, 29 L.Ed.2d 619 (1971). According to his complaint, Ali was transferred from a federal prison in Atlanta, Georgia to a prison in Inez, Kentucky. Ali discovered upon his arrival in Kentucky that several religious and personal items were missing from his belongings. After the Federal Bureau of Prisons ("BOP") rejected Ali's administrative claim under the FTCA, Ali filed suit in federal court. The district court dismissed Ali's FTCA claim for lack of subject matter jurisdiction because the United States did not waive sovereign immunity; the court dismissed Ali's non-FTCA claims for lack of exhaustion of administrative remedies. On appeal, Ali argues that the prison officers who mishandled his belongings do not fall within an exception to the waiver of sovereign immunity for FTCA claims. Ali also argues that the district court erred in failing to convert the defendants' motion to dismiss into a motion for summary judgment.

We review *de novo* the grant of a motion to dismiss for want of subject matter jurisdiction. *Milan Express, Inc. v. Averitt Express, Inc.*, 208 F.3d 975, 978 (11th Cir. 2000). In determining whether subject matter jurisdiction exists, a court is permitted to investigate widely and has authority to look beyond the pleadings. *Lawrence v. Dunbar*, 919 F.2d

1525, 1529 (11th Cir. 1990) (stating that a court may review matters outside the pleadings, including testimony and affidavits).

First, Ali argues on appeal the district court erred in dismissing his FTCA claim because the court interpreted the exclusion to the FTCA found under 28 U.S.C. 2680(c) too broadly. The FTCA provides a waiver of the United States' sovereign immunity to suits for damages attributed to its employees acting within the scope of their employment, if said employees would be liable to the claimant individually under the law of the *situs* . 28 U.S.C. § 1346(b)(1). Congress has promulgated a number of exceptions to this waiver of sovereign immunity, including 28 U.S.C. § 2680(c), which exempts "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or *any other law enforcement officer*." (emphasis added).

The United States Supreme Court has interpreted § 2680(c) broadly to cover not only damages arising from the detention of goods or merchandise, but also situations in which damages result from their negligent storage or handling. *Kosak v. United States*, 465 U.S. 848, 854-59, 104 S. Ct. 1519, 1523-25, 79 L. Ed. 2d 860 (1984). The definition of "any other law-enforcement officer," within the meaning of § 2680(c) has been addressed by this circuit and sister circuit courts of appeal. *Schlaebitz v. United States Dep't of Justice*, 924 F.2d 193 (11th Cir. 1991). In *Schlaebitz*, we held that U.S. Marshals, who were allegedly negligent in releasing a parolee's luggage to a third party, were "law-enforcement officers" within the meaning of the FTCA exception in § 2680(c). 924 F.2d at 195; *see also United*

States v. Potes Ramirez, 260 F.3d 1310, 1315-16 (11th Cir. 2001).

After reviewing the record, we conclude that the district court did not err in finding that the officers who handled Ali's property fall within the exception found in 28 U.S.C. § 2680(c). *See Schlaebitz*, 924 F.2d at 194-95. Accordingly, the district court did not err in dismissing Ali's FTCA claim for want of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

Next, Ali argues on appeal the district court should have turned the motion to dismiss into a motion for summary judgment because the district court considered materials that the defendant had submitted outside of the complaint. Ali argues that had he been given notice of a motion for summary judgment, he would have submitted additional affidavits or other evidence to counter the defendants' position.

We review *de novo* a district court's dismissal of a prisoner's action for failure to comply with the exhaustion requirements of 42 U.S.C. § 1997e(a). *Higginbottom v. Carter*, 223 F.3d 1259, 1260 (11th Cir. 2000). Pursuant to § 1997e(a), "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." A civil action with respect to "prison conditions" means "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." 18 U.S.C. § 3626(g)(2); *Higginbottom*, 223 F.3d at 1260.

We have explained that "Congress now has mandated exhaustion in section 1997e(a) and there is no longer discretion to waive the exhaustion requirement. . . . [E]xhaustion is now a *pre-condition* to suit . . . ." *Alexander v. Hawk*, 159 F.3d 1321, 1325-26 (11th Cir. 1998) (emphasis added); *see also Leal v. Georgia Department of Corrections*, 254 F.3d 1276, 1279 (11th Cir. 2001) (same). We have also concluded that "[a] claim that fails to allege the requisite exhaustion of remedies is tantamount to one that fails to state a claim upon which relief may be granted." *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998).

Here, Ali failed to provide any information that would indicate he exhausted the administrative remedies for his non-FTCA claims. Therefore, Ali's claims are "tantamount" to claims that "fail to state a claim upon which relief may be granted" because Ali failed to "allege the requisite exhaustion of remedies" for his non-FTCA claims. *See Rivera*, 144 F.3d at 731.

Lastly, Ali alleged below and on appeal that he would have exhausted his administrative remedies if prison officials had not misled him into thinking he only needed to file one claim form in order to pursue both his FTCA and non-FTCA claims. The district court recognized this argument and proceeded to find that "[t]he statement made to Plaintiff about filing a standard-form 95 specifically related to his FTCA claim." The question arises of whether the district court's treatment of Ali's statements were more akin to the analysis for a summary judgment motion. If so, we must decide whether the exhaustion requirements under the PLRA can be waived if a prisoner is misled into believing he has satisfied administrative procedures.

On review of a motion to dismiss, we will accept all allegations in the complaint as true and construe facts in a light most favorable to the plaintiff. *Harper v. Thomas*, 988 F.2d 101, 103 (11th Cir. 1993). A complaint should not be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957); *Marsh v. Butler County, Ala.*, 268 F.3d 1014, 1022 (11th Cir. 2001) (*en banc*).

After reviewing the record, we conclude that it is unclear whether Ali was in fact misled by prison officials which may excuse the exhaustion requirement. Therefore, we vacate the district court's dismissal of Ali's non-FTCA claims and remand this case for the district court to decide this issue in the first instance.

AFFIRMED in part, VACATED in part, and REMANDED.